

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2622 of 1997

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHEMAJI VIRAJI THAKORE

Versus

DISTRICT PANCHAYAT EDUCATION COMMITTEE

Appearance:

MR JD AJMERA for Petitioner

MR HS MUNSHAW for Respondent No. 1

SERVED for Respondent No. 2, 3

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 19/09/97

ORAL JUDGEMENT

The petitioner here is a Primary School Teacher serving under the District Panchayat Education Committee, Banaskantha, respondent No.1 herein. The petitioner joined service as a Primary School Teacher under the respondent No.1 Committee on 25th August, 1975. The respondent No.1 under its order dated 27th May, 1993

sanctioned to the petitioner the higher payscale of Rs.1400-2600. It appears that the said order made in favour of the petitioner was not approved by the Auditors and in view of the objection raised by the Auditors, under order dated 15th March, 1997 made by the respondent No.1, the aforesaid order dated 27th May, 1993 has been cancelled. Pursuant to the order dated 15th March, 1997, an order has been made on 20/25th March, 1997 by the respondent No.2 seeking recovery of a sum of Rs. 27,229/- being the amount of difference of salary paid to the petitioner for the period from 1st June, 1987 to February, 1997. It is further ordered that since March, 1997 the petitioner's pay should be reduced to the scale of Rs.1200-2040. Feeling aggrieved, the petitioner has preferred this petition.

The respondents have contested this petition and the District Primary Education Committee has made a counter-affidavit on behalf of the respondent No.1. It is stated that the petitioner was transferred from Songadh Primary School to Vagodia Primary School in the month of September, 1996. The petitioner did not obey the said order of transfer. The petitioner, thereafter, was posted at Songadh under order dated 15th September, 1987. Thus, the petitioner remained absent from service for the period from 7th September, 1986 to 15th September, 1987. The petitioner wrongly received salary for the said period. The period of absence has caused break in his service. The petitioner has not applied for regularisation of break in service, nor has the said period been regularised. Thus, in view of the break in service, the petitioner has wrongly been given benefit of the higher grade with effect from 1st June, 1987. It is, therefore, contended that the respondents have rightly sought to recover the amount of difference of salary from the petitioner.

I need not go into the correctness of the averments made either by the petitioner or the respondents herein. It is undisputed that under order dated 27th May, 1993, the petitioner has been granted the benefit of higher grade as stated hereinabove. The petitioner was paid salary for the period from 7th September, 1986 to 15th September, 1987. The petitioner has contended that the petitioner was not afforded any opportunity to represent against the proposed action before the respondent No.1 cancelled the order dated 27th May, 1993 and the respondent No.2 made the consequential order on 20/25th March, 1997. The assertions made by the petitioner has not been disputed by the respondents. It is well settled proposition of law that if any benefit is

granted to an employee, such benefit can not be withdrawn without affording an opportunity to show cause against the proposed action. The impugned orders, therefore, are made against the petitioner in violation of the principles of natural justice, and require to be quashed and set aside on that ground alone.

Petition is, therefore, allowed. The orders dated 15th March, 1997 (Annexure-C to the petition) and 20/25th March, 1997 (Annexure-D to the petition) are quashed and set aside. The respondents are restrained from recovering any amount of difference of salary pursuant to the above referred orders dated 15th March, 1997 and 20/25th March, 1997. It is clarified that the respondents shall be at liberty to withdraw the benefit of higher grade granted to the petitioner or to recover the amount of salary paid to him for the period of his absence from service in accordance with law, but not without affording the petitioner an opportunity to show cause against the proposed action. Rule is made absolute accordingly. The respondent No.1 shall pay the costs of this petition to the petitioner. Rest of the respondents shall bear their own costs.

JOSHI